IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1746 OF 2004

Ms. Sarita Shyam Dake]
Age : 30 years]
R/o : Sahjivan Society,] Petitioner
2nd Floor, Room No. 28,]
Ganesh Nagar, Lalbaug,]
Mumbai - 400 012]

Vs.

1) Sr. Police Inspector]
M.R.A. Police Station,]
Mumbai]
]

2. Chief Administrative Officer]
Sr. Staff Officer]
(Civil Personnel),]
Headquarters, Western Naval]
Command, SBS Road,]
Mumbai - 400 001]
]

3. State of Maharashtra] Respondents
]

4. Union of India]
]

5. Shri Vijay Gopal Sangare]
Adult,]
R/o : 43/3186, Abjiday Nagar]
Kalachowki, Mumbai - 400 033]

Ms. Manda Loke for Petitioner
Dr. F.R. Shaikh APP for Respondent Nos. 1 & 3.
Mr. D.N. Salvi for Respondent Nos.2 & 4.
None for rest of the Respondents.

CORAM : SHRI R.M.S. KHANDEPARKAR, &
SHRI A.A. SAYED, JJ.

DATE : 4TH DECEMBER, 2007

ORAJ JUDGMENT (PER SHRI R.M.S. KHANDEPARKAR, J.)

1) Heard learned Advocate for the Petitioner, the Respondent Nos.1 and 3 as well as the

Respondent nos.2 and 4. None present for other Respondents, though served.

2) By the present petition, the petitioner is seeking to quash and set aside the criminal proceedings initiated consequent to the C.R. No.2105 of 2004 registered at MRA Marg Police Station, Mumbai under Section 3(1)(x) of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter called as " the Atrocities Act") read with 7(1)(c) & (d) of The Protection of Civil Rights Act, 1955 (hereinafter called as "the Civil Rights Act") on the ground that the complaint on the face of it nowhere discloses any offence either under the Atrocities Act or under the Civil Rights Act.

3) The Petitioner and the Respondent NO. 5 who is the original complainant are in employment of the Respondent No.2. The Petitioner is the Peon and the Respondent No.5 is a Draughtsman. On 3rd August 2004, a complaint dated 22nd July 2004 came to be lodged at MRA Marg Police Station, Mumbai which came to be registered as F.I.R.2105 of 2004 dated 3rd August 2004 for the offence punishable under Section 3(1)(x) of the Atrocities act and Section 7(1)(c)(d) of the Civil Rights Act. Pursuant to the complaint, certain statements came

to be recorded by the Police authorities during the course of the investigation.

4) It is the case of the Petitioner that inspite of various statements recorded by the Police authorities, no material could be collected during the course of investigation and the Respondent No. 5 was seeking to exert pressure through politicians and some other influential persons to harass the petitioner and that therefore the Petitioner has been compelled to approach to this Court in writ jurisdiction to quash the said F.I.R. and the proceedings arising therefrom. It is also the case of the Petitioner that even the Naval authorities i.e. Respondent Nos.2 and 4 have enquired into the matter and have found the complaint of the Respondent no. 5 to be without any substance and even have submitted the report dated 18th August 2004 to that effect MRA Marg Police station. It is further the case of the Petitioner that the allegations disclosed in the complaint nowhere reveal any case for proceeding against the Petitioner under any of the provisions of the said Acts. Therefore, the F.I.R. and the proceedings consequent to the said F.I.R. should be quashed. The learned Advocate appearing for the Petitioner drawing our attention to the complaint and the relevant provisions of law submitted that

the complaint nowhere reveals necessary ingredients of the provisions of law under which the Petitioner is sought to be prosecuted and the investigation is to be conducted. As the complaint does not disclose the ingredients of any of those provisions of law, the impugned F.I.R. and the proceedings should be quashed.

5) Learned APP appearing for the respondent Nos.1 and 3 on the other hand submitted that the complainant is a member of the Scheduled Caste and on account of words uttered by the Petitioner as alleged in the complaint, the respondents had no option than to register the F.I.R. and to conduct the investigation in the matter. Learned Advocate for the Respondent Nos.2 and 4 however, submitted that Naval authorities having enquired into the matter could not find any substance in the complaint and submitted their report to the MRA Marg Police Station under their letter dated 17th August 2004.

6) Perusal of the complaint dated 9/12/2003 based on which the impugned F.I.R. has been registered undoubtedly discloses that the Respondent - complainant belongs to the Scheduled Caste. The specific allegation against the petitioner in the complaint is to the effect that

on 30th July 2002 at about 9.30 am. while the Petitioner and the Respondent No.5 were in their office, the Petitioner uttered the expression "khalchya nich jaticha" with reference to the respondent/complainant and thereby tried to humiliate the respondent. The complaint further discloses that the said fact was orally brought to the notice to the Chief Petty Officer through Mr. R.K. Yadav by the complainant. However, he did not take any note of the same. On the basis of this allegation, the MRA Marg Police Station recorded the F.I.R. No. 2105/2004 as stated above.

7) Section 3(x) of The Atrocities Act provides that "whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view shall be punishable with imprisonment for a term which shall not be less than six months, but it may extend to five years and with fine". The provision of law comprised in Section 3(1)(x) of The Atrocities Act clearly requires that an act of insult or intimidation to humiliate a member of the Scheduled Caste should be in any place within a public view. In other words, in order that an act of insult or intimidate with

intent to humiliate a member of Scheduled Caste or Scheduled Tribe should warrant proceedings under the Atrocities Act under the said provision of law, such act must have been committed in a place which is situated within a public view. It means the act should be visible and audible to a third party. If such an act takes place in a closed premises and not in presence of a third person, then such act cannot be said to be either visible or audible to public.

8) If one peruses the complaint in the case in hand, it nowhere speaks of any words having been uttered by the Petitioner in public view. On the contrary the complaint specifically discloses that the alleged words were uttered in the office premises of the petitioner and the Respondent No.5. The complaint nowhere discloses reference to the presence of any third person at the time of said incident. The complaint nowhere discloses that the words uttered were in any manner visible or audible to a third party. It also does not disclose that the incidence could be seen by any third party from outside office premises. In the circumstances, the Petitioner is justified in contending that the act in the complaint does not disclose the essential ingredients of Section 3(1)(x) of The Atrocities Act which requires incidence to be in a public

view.

9) In Pradnya Pradeep Kenkare & another vs. State of Maharashtra reported in 2005(2) Bom.C.R. (Cri.) 431, it was held that "the provisions of Section 3(1)(x) of The Atrocities Act could be attracted only in a case of insult or intimidation to a member of Scheduled Caste or Scheduled Tribe in any place within "a public view" and the said expression has a specific meaning and further that every allegation made in a public place that itself would not amount to an offence under the Atrocities Act. It was specifically ruled that expression "public view" has been prefixed by the preposition "within" which in fact follows the expression "in any place". In other words, the expression relating to the location of the alleged offence is qualified by the requirement of being "within public view". The Act of insult or intimidation must be visible and audible to the public in order to constitute such Act to be an offence under Section 3(1)(x) of the said Act. The word "view" refers to the term ‘public’ but prefixed by the expression "in any place within". Being so, the word "public" not only relates to the location defined by the word "place" but also is the subject to condition that the incidence of insult or intimidation to the member of the scheduled Caste

or Tribe must be witnessed by public. Therefore, the incidence of insult or intimidation has to occur in a place accessible to and in the presence of the public".

10) Similarly in the case V.P. Shetty, Chairman of Industrial Development Bank of India Ltd. vs. Sr. Inspector of Police & another reported in 2005(2) Bom. C.R. (Cri) 891, considering that the allegation in the complaint related to the acts by the accused in the closed cabin of the accused and in the absence of any stranger, it was held that the accusation against the accused in those circumstances can hardly be said to be amounting to insult or humiliation to the member of Scheduled Castes or Scheduled Tribes within the meaning of the Atrocities Act.

11) Section 7(1)(c) of The Civil Rights Act provides that whoever by words, either spoken or written, or by signs or by visible representations or otherwise, incites or encourages any person or class of persons or the public generally to practice "untouchability" in any form whatsoever shall be punishable with imprisonment for a term of not less than one month and not more than six months, and also with fine which shall be not less than one hundred rupees and not more than five

hundred rupees.

12) Section 7(1)(d) of the Civil Rights Act provides that "whoever insults or attempts to insult, on the ground of "untouchability", a member of a Scheduled Caste shall be punishable in the same manner as in case of offence under Section 7(1)(c) of Civil Rights Act". Explanation II of the said Section (7) provides that for the purpose of clause (c) a person shall be deemed to incite or encourage the practice of untouchability, if he, directly or indirectly, preaches untouchability or its practice in any form; or if he justifies, whether on historical, philosophical or religious grounds or on the ground of any tradition of the caste system or on any other ground, the practice of untouchability in any form.

13) On plain reading of Section 7(1)(c) of the Civil Rights Act, it discloses that the offence under the said provision can be said to have been committed when a person incites or encourages any other person or class of persons or the public generally to practice "untouchability". Merely because somebody is insulted by referring to his caste or otherwise, it cannot be said to constitute an offence under Section 7(1)(c) of The Civil Rights Act.

14) As regards Section 7(1)(d) of The Civil Rights Act, it relates to insult or attempt to insult a member of Scheduled Caste on the ground of untouchability.

15) If one peruses the complaint, it nowhere speaks about any insult to the complainant being caused by the Petitioner on the ground of untouchability. It is neither the grievance of the complainant that there is any incitement or encouragement by the Petitioner to practice untouchability nor the complainant speaks about the insult on the ground of untouchability. Being so the complaint nowhere warrants investigation in relation to the offence alleged to have been committed under Section 7(1)(c)) or (d) of the Civil Rights Act.

16) The records undoubtedly disclose that competent authority to whom the complaint was made by the complainant about the alleged act on the part of the Petitioner had conducted the fact finding enquiry but the complainant was not able to establish his allegations against the Petitioner. The letter dated 18th August 2004 by the Chief Administrative Officer of Naval Establishment addressed to the Senior Inspector of Police, MRA

Marg Police Station, copy of which is to be found annexed to the petition as Exhibit 'C', clearly discloses that the competent authority had conducted the fact finding enquiry consequent to the complaint by the Respondent No.5 in relation to the alleged incident and in the enquiry, the complainant could not establish his allegations against the Petitioner. It is also not in dispute that even after lodging the F.I.R., the Police had recorded the statements of various persons but could not find any support to the allegations in the complaint against the Petitioner.

17) The allegations in the complaint nowhere discloses any offence as either 3(1)(x) of the Atrocities Act or under Section 7(1)(c) and (d) of the Civil Rights Act and therefore the Petitioner is justified in submitting that the F.I.R. along with the proceedings be quashed.

18) For the reasons stated above, the Petition succeeds. The impugned F.I.R. bearing No. 2105/2004 dated 3rd August 2004 registered at M.R.A. Marg Police Station, Mumbai under Section 3(1)(x) of the Atrocities Act and under Section 7(1)(c) and (d) of The Civil Rights Act as well as the consequential investigations are hereby quashed and set aside.

19) Rule is made absolute in terms of Prayer Clauses (b) and (c) with costs. Costs to be borne by the Respondent No. 5.

(R.M.S. KHANDEPARKAR, J.)

(A.A. SAYED, J.)